

TENTATIVE RULINGS for CIVIL LAW and MOTION

July 23, 2009

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6942

TENTATIVE RULING

Case: **Haskell v. California Casualty Indemnity Exchange**
Case No. CV PT 09-1237
Hearing Date: **July 23, 2009** **Department Fifteen** **9:00 a.m.**

The motion to compel arbitration is **DENIED**. The parties have already agreed to arbitrate this matter.

The motion for an order that the arbitration proceedings be concluded by October 1, 2009, is **DENIED**. Petitioner has not established good cause for requiring that arbitration be concluded by October 1, 2009.

The unopposed motion for an order that this Court retain jurisdiction to decide discovery disputes is **GRANTED**. (*Miranda v. 21st Century Ins. Co.* (2004) 117 CA4th 913, 926.)

The motion for an order that the amount of the policy limit not be disclosed to the arbitrator is **DENIED**. The arbitrator may not issue an award that is greater than the policy limit. (*State Farm Mutual Auto. Ins. Co. v. Superior Court of Los Angeles County* (2004) 123 Cal.App.4th 1424, 1429 and 1431.) Petitioner has not shown that Judge Gilbert, who is an experienced jurist, would not be able to fairly judge this matter if the policy limit is disclosed.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Resurgence Financial, LLC v. Lyda**
Case No. CV G 06-1345
Hearing Date: **July 23, 2009** **Department Fifteen** **9:00 a.m.**

The motion to vacate the October 30, 2008 default judgment entered against Anna Marie Lyda is **DENIED**. (Code Civ. Proc., § 473, subd. (b).)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Slaven v. Cramer**
Case No. CV CV 07-2674
Hearing Date: **July 23, 2009** **Department Fifteen** **9:00 a.m.**

Motion for Summary Judgment by Defendant Jack Cramer:

Defendant Jack Cramer's motion for summary judgment is **DENIED**. Defendant failed to show that plaintiffs lack standing. (Code Civ. Proc., § 437c; UMF Nos. 27, 41 & 42.) The Court finds that in light of all the circumstances, the term "insurance company(ies)" in the assignment clause is fairly susceptible to plaintiffs' interpretation that plaintiffs did not assign their causes of action or claims against Jack Cramer. (*Pacific Gas and Electric Co. v. G.W. Thomas Drayage & Rigging Co.* (1968) 69 Cal.2d 33, 37-40; Defendant Jack Cramer's Exhibit E; Declaration of Robert Lea, ¶¶ 1-3; Declaration of William Slaven ¶¶ 1-5.)

Defendant Jack Cramer's request for judicial notice is **GRANTED**. (Evid. Code, § 452, subd. (d).)

Defendant Jack Cramer's objection to evidence number 7 is **SUSTAINED**. All other objections are **OVERRULED**. (Civ. Code, § 1636; Code Civ. Proc., § 1860; *Voorheis v. Hawthorne-Michaels Company* (1957) 151 Cal.App.2d 688; *Pacific Gas and Electric Co. v. G.W. Thomas Drayage & Rigging Co.*, *supra*, 69 Cal.2d 33.)

Plaintiffs' request for judicial notice is **GRANTED**. (Evid. Code, § 452, subd. (d).)

Plaintiffs' evidentiary objections are **OVERRULED**. (Evid. Code, § 350; Declaration of Bret Batchman, ¶¶ 3 & 4, Exhs. N & O.)

Plaintiff is directed to prepare a formal order consistent with this ruling and in accordance with Code of Civil Procedure section 437c, subdivision (g) and California Rules of Court, rule 3.1312.

Motion for Summary Judgment, or in the alternative, summary adjudication by Defendants Nationwide Mutual Insurance Company and Allied Property and Casualty Insurance Company:

The Court requests further briefing on the issue of ostensible agency, i.e. whether the Nationwide defendants are liable for the actions or inactions of their alleged agent Jack Cramer. The Court directs the parties to address the following cases in their briefs: *Loehr v. Great Republic Ins. Co.* (1990) 226 Cal.App.3d 727; *Desai v. Farmers Ins. Exchange* (1996) 47 Cal.App.4th 1110; *Preis v. American Indem. Co.* (1990) 220 Cal.App.3d 752; and *Clement v. Smith* (1993) 16 Cal.App.4th 39. These cases appear to hold that an insurance agent's

negligence in failing to procure the type of insurance bargained for by the insured may be attributed to the insurer under theories of ratification and ostensible authority.

The parties shall file their further briefs, not to exceed ten pages in length, by July 31, 2009. A further hearing will be held on August 5, 2009, in Department 15 at 9:00 a.m.

TENTATIVE RULING

Case: **The People of the State of California v. \$102.00 U.S. Currency**
 Case No. CV PT 07-2605

Hearing date: **July 23, 2009** **Department Fifteen** **9:00 a.m.**

Petitioner's unopposed motion for summary judgment is **DENIED WITHOUT PREJUDICE**. (Code Civ. Proc., § 437c, subd. (b)(1).) Petitioner did not file a declaration or request for judicial notice in support of the motion, establishing the foundation for the evidence set forth in the separate statement of undisputed material facts. (Evid. Code, §§ 452, 453, & 455.)

Petitioner is directed to prepare a formal order consistent with this ruling and in accordance with Code of Civil Procedure section 437c, subdivision (g) and California Rules of Court, rule 3.1312.

TENTATIVE RULING

Case: **Young v. Tarasenko**
 Case No. CV PO 09-327

Hearing Date: **July 23, 2009** **Department Fifteen** **9:00 a.m.**

The demurrer by defendant Valery D. Tarasenko, M.D. is moot. Plaintiff filed an amended complaint for damages on June 8, 2009.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.